

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:) Chapter 11
)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
Debtor.)

**MOTION TO APPROVE SETTLEMENT AMONG THE TRUSTEE, THE ESTATE,
SUPERIOR LIVESTOCK AUCTION INC., AND FIFTH THIRD BANK**

James A. Knauer, the Chapter 11 Trustee ("Trustee") appointed in the above captioned case ("Chapter 11 Case") for the estate ("Estate") of Eastern Livestock Co., LLC ("Debtor"), by counsel, moves this Court ("Motion") for an Order approving the proposed compromise attached as Exhibit 1 ("Settlement Agreement") with Superior Livestock Auction, Inc. ("Superior") and Fifth Third Bank ("Fifth Third"). The Settlement Agreement resolves the claims of Superior against the Trustee, individually and as Trustee, the Estate and Fifth Third and the claims of the Trustee, the Estate and Fifth Third against Superior, and resolves other controversies, litigation, and an appeal pending in the Chapter 11 Case. In support of this Motion, the Trustee says:

Jurisdiction

1. Certain petitioning creditors commenced the above-captioned Chapter 11 case against the Debtor on December 6, 2010 by filing an involuntary petition for relief under Chapter 11 of the Bankruptcy Code ("Petition Date"). This Court entered an *Order For Relief in An Involuntary Case and Order to Complete Filing* [Dkt. No. 110] on December 28, 2010. On December 27, 2010, the Court entered an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Dkt. No. 102] pursuant to 11 U.S.C. § 1104. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and

1409. The statutory predicates for the relief sought herein are 11 U.S.C. § 105(a) and FED. R. BANKR. P. 9019.

Settlement

2. Superior, the Trustee, Fifth Third and other parties participated in a Court-authorized two-day mediation session on October 9 and October 10, 2012 in Louisville, Kentucky. As a result of that mediation and further negotiations, Superior, the Trustee, and Fifth Third have agreed to settle their disputes on the terms set forth in the proposed Settlement Agreement attached hereto as Exhibit 1. To the extent any description herein or in any notice of this Motion differs from the Settlement Agreement, the Settlement Agreement controls. A proposed form of order granting this Motion and approving the Settlement Agreement is attached as Exhibit 2.

3. Generally speaking, the result of the Settlement Agreement for the Estate will be a substantial reduction in the total amount of unsecured claims in the Chapter 11 Case, by withdrawal of claims by Superior, thus increasing any percentage payment to the remaining unsecured claims. The Settlement Agreement will also resolve contentious litigation that has been expensive and time-consuming for all parties. Because the Settlement Agreement confers a benefit to the Estate, the Trustee has proposed in the *Trustee's First Amended Chapter 11 Plan* [Docket No. 1490] ("Plan") as explained in the *First Amended Disclosure Statement to the Trustee's First Amended Chapter 11 Plan* [Docket No. 1489] ("Disclosure Statement") that Superior receive the same third party release as Fifth Third set forth in the Opt In Agreement (as defined in the Plan) and executed by an Opt In Creditor (as defined in the Plan). See Exhibits A and B to the Plan. The Disclosure Statement was approved by this Court on November 2, 2012 and the Disclosure Statement and Plan were sent to creditors for consideration and voting

beginning November 5, 2012. The proposed Settlement Agreement was described in the Disclosure Agreement and Plan.

4. The proposed Settlement Agreement will be effective upon the entry of the order ("Effective Date") approving the Settlement Agreement. On the Effective Date or within three business days thereafter, the Trustee will pay the Superior Payment (as described in the Settlement Agreement), Superior will be entitled to draw and claim for its own use the Superior Escrow (as described in the Settlement Agreement), and the parties will file all necessary pleadings to dismiss or withdraw with prejudice any all claims, appeals, pleadings, litigation, and proceedings pending among them.

5. To the extent Rules 6604(h) or 6006(d) of the Federal Rules of Bankruptcy Procedure may be deemed to be applicable to any order granting this Motion or approving the Settlement Agreement, the Trustee requests that the Court hold that the order is not stayed but becomes effective immediately.

6. The Trustee believes the Settlement Agreement as set forth in Exhibit 1 is in the best interest of the Estate and its creditors.

BRIEF IN SUPPORT

A. The Settlement Is Fair and in the Best Interests of the Debtors' Estates and Should Be Authorized Pursuant to Bankruptcy Rule 9019(a).

7. Bankruptcy Rule 9019(a) authorizes a bankruptcy court, on motion by a trustee and after appropriate notice and a hearing, to approve a compromise or settlement so long as the proposed compromise or settlement is fair and equitable and in the best interest of the estate. See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994) ("In conducting a hearing under Rule 9019(a), the bankruptcy court is to determine whether the

proposed compromise is fair and equitable and in the best interests of the bankruptcy estate.") (internal citations omitted); In re Andreuccetti, 975 F.2d 413, 421 (7th Cir. 1992) (Bankruptcy Rule 9019(a) authorizes the court to approve a settlement if "the settlement is in the best interests of the estate."); In re Energy Co-op, Inc., 886 F.2d 921, 927 (7th Cir. 1989) ("[t]he benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.").

8. Compromises are tools for expediting the administration of the case and reducing administrative costs and are favored in bankruptcy. See Fogel v. Zell, 221 F.3d 955, 960 (7th Cir. 2000) ("Judges naturally prefer to settle complex litigation than to see it litigated to the hilt, especially when it is litigation in a bankruptcy proceeding — the expenses of administering the bankruptcy often consume most or even all of the bankrupt's assets."); In re Martin, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy").

9. It is well-settled that a proposed settlement need not be the best result that the debtor could have achieved, but only must fall "within the reasonable range of litigation possibilities." Energy Co-op, 886 F.2d at 929.

10. As further guidance, the Seventh Circuit has offered the following guidelines:

Central to the bankruptcy judge's determination is a comparison of the settlement's terms with the litigation's probable costs and probable benefits. Among the factors the bankruptcy judge should consider in [the] analysis are the litigation's probability of success, the litigation's complexity, and the litigation's attendant expense, inconvenience, and delay.

LaSalle Nat'l Bank v. Holland (In re Am. Reserve Corp.), 841 F.2d 159, 161 (7th Cir. 1987) (citations omitted).

11. The Settlement Agreement, negotiated at arm's length and in good faith, achieves a result that is in the best interest of the Estate and the creditors of this Chapter 11 Case. As set

forth more specifically in Exhibit 1, the Settlement Agreement resolves multiple pending actions and litigation among the parties and thus should cause the Chapter 11 Case to move towards completion and distribution of monies to creditors.

12. For these reasons, the Settlement Agreement maximizes the value of the Estate's assets and minimizes the burden to the Estate. The Settlement Agreement should be approved pursuant to Bankruptcy Rule 9019.

NOTICE

13. The Trustee will provide notice of this Motion pursuant to FED. R. BANK. P. 2002(a)(3) and is seeking shortened notice in order to place this Motion before the Court for hearing on November 19, 2012, the next date set for an omnibus hearing. The proposed Settlement Agreement was described in open court at the Disclosure Statement hearing on October 31, 2012, and was described in the Disclosure Statement and Plan, including the blacklines of both filed by the Trustee.

NO PRIOR REQUEST

14. No prior motion for the relief requested herein has been made to the Court in this case.

CONCLUSION

For the foregoing reasons, the Trustee respectfully requests that this Court enter an order approving the Settlement Agreement, as it is in the best interests of the Estate and its creditors.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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